***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

W.P.No.25758 of 2005

% 4-01-2006

Between:

Y.S.Vidya Sagar

…Petitioner

And

The Deputy General Manager,

Disciplinary Authority, State Bank of India,

Zonal Office, Visakhapatnam.

…Respondent

! COUNSEL FOR PETITIONER: Mr.K.V.Satyanarayana

^ COUNSEL FOR RESPONDENT: Mr.E.Madan Mohan Rao, Standing Counsel.

< Gist:

> Head Note:

? CITATIONS:

1. (1996) 6 SCC 417
2. 1999(1) ALD 94

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25758 OF 2005

Dated 4th January 2006

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O R D E R:

The petitioner is an officer of Middle Management-II, of State Bank of India. A memorandum of allegations, dated 31.12.2004, was served upon him by the

respondent, alleging that he has resorted to various acts of misconduct. As many as 9 charges were framed, and the facts relating to each charge were detailed in an annexure. Before this, the respondent lodged a complaint on 17.2.2003, with Kothavalasa Police Station. Corresponding proceedings are pending before the Court of Judicial First Class Magistrate, Kothavalasa, as Crime No.9 of 2003. The police filed charge sheet on 30.8.2005. The petitioner contends that several items of charge are common in the criminal proceedings, as well as the disciplinary proceedings, and instead of awaiting conclusion of the criminal proceedings, the respondent is proceeding with the departmental enquiry.

Sri K.V.Satyanarayana, learned counsel for the petitioner, submits that the petitioner cannot be compelled to reveal his defence, in respect of the charges, in the disciplinary proceedings, and in such an event, it would cause prejudice to the petitioner in the criminal proceedings. By undertaking a comparison of the charge memo with the charge sheet, he submits that there are several items, which are identical in both the sets of proceedings. Placing reliance upon certain judgments of the Supreme Court, he contends that the respondent cannot be permitted to proceed with the departmental enquiry.

Sri E.Madan Mohan Rao, learned Standing Counsel for the respondent, on the other hand, submits that the nature of allegations in the disciplinary proceedings and the criminal proceedings, are different, and simply because one or two facts are common to both the sets of proceedings, the petitioner cannot insist on stalling of the departmental proceedings. He submits that even where the charges are common, it is permissible for the departmental authorities, to proceed with the matter, notwithstanding the fact that the criminal proceedings are pending. He too places reliance upon certain decided cases.

The charge memo issued by the respondent was preceded by a complaint to the police. The charge sheet, however, was filed in the criminal case, one and half years, after the charge memo was issued. The record does not disclose that there was any substantial progress in the departmental proceedings, till now. The actual nature of charges, which the petitioner had to face in the criminal proceedings, was known to him, only after the charge sheet was filed on 30.8.2005.

A comparison of the charge memo in the disciplinary proceedings, with the charge sheet, in criminal proceedings, discloses that these are some items, which

are identical in nature. For example, the allegation against the petitioner that he made fictitious entries in the S.B. Accounts and passed on pecuniary benefits to others, finds place in both the sets of proceedings. The amount involved, the number of the accounts, and name of the account holder are the same. There are few other instances of similar nature.

The question as to whether an employer can proceed with the departmental enquiry, where the charges in such proceedings are similar to those in the criminal proceedings against the employee, had troubled the parties and courts alike. The principal consideration that weighs with the Courts, in such matters, is that if an employee is required to disclose his defence in the disciplinary proceedings, he would be subjected to prejudice in the trial, before the Criminal Court. In such an event, the prosecution would have an opportunity to fill the lacunae, in the trial of the matter. It is with a view to avoid such situations, that the courts held, that where the charges are identical to both the sets of proceedings, the departmental ones must await the verdict of the Criminal Court. However, it was made clear that stoppage of departmental proceedings is not a matter of course, and much would depend upon the nature of allegations, complications involved in the matter, and ultimately, the facts and circumstances of the case. The law, in this regard, was succinctly summed up by the Supreme Court, in its judgment in ***STATE OF RAJASTHAN V. B.K.MEENA***, in the following words:

> "It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary, it is emphasized, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is 'that the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability', or 'propriety', as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case."

Taking this and the other decisions on the subject, into account, Justice B.Sudershan Reddy, as he then was, had undertaken a detailed discussion on the law and the subject; in ***G.YANGANTIAH V. DEPOT MANAGER, ANANTAPUR AND ANOTHER***, and observed as under:

> "It is thus clear that postponement of disciplinary proceedings and grant of stay directing disciplinary authorities not to proceed with the enquiry is not a matter of course. Clear case has to be made out, that complicated questions of fact and law are involved at the trial in the criminal case and revealing of defence in the departmental proceedings would cause prejudice to the delinquent at the trial in the criminal case."

Authorities can be multiplied in this regard.

Reverting to the facts of the case, it is true that the similarity of charges is only partial, and there are several charges in the departmental proceedings, which do not find place in the criminal proceedings. In such a situation, the respondent has two options, *viz*., to await the conclusion of the criminal proceedings, or to proceed with the departmental proceedings, as regards such charges, which do not find place in the charge sheet in the criminal case, and even those which are common in both the proceedings, but are not serious in nature. Neither any hard and fast rule can be laid, nor a litmus test can be prescribed, with the help of which charges can be differentiated, in the lines indicated above. Though there must not be any difficulty in differentiating the charges, which do not find place in both the sets of proceedings, it would be difficult to differentiate among the charges, which find in both the proceedings, on the touchstone of seriousness and complications.

Another aspect of the matter is that, even if the respondent proceeds against the petitioner in respect of the charges, which are not common to both the proceedings, it is not as if it is precluded from dealing with the other charges, after the criminal proceedings conclude. Even assuming that the petitioner is acquitted in the criminal proceedings, it would be competent for the respondent to resume the disciplinary proceedings against the petitioner. On the other hand, if the petitioner is convicted, the conviction itself can constitute the basis, for necessary action. In view of these variable situations, the respondent has to make up its mind. At this stage, this Court can, however, direct the respondent not to proceed with the departmental enquiry in respect of charges, which are serious in nature, and find place in the charge sheet

filed in the criminal case.

For the foregoing reasons, the writ petition is disposed of, directing that;

a. it shall be open to the respondent to proceed with the departmental enquiry against the petitioner, in respect of those charges in the charge memo dated 31.12.2004, which do not find place in the charge sheet, dated 30.8.2005, in Crime No.9 of 2003, on the file of Judicial Magistrate of First Class, Kothavalasa.

b. As regards the charges, which are common in departmental and criminal proceedings, and are serious and complicated, the respondent shall be entitled to resume the enquiry, after the conclusion of the criminal proceedings, depending on the outcome thereof.

c. In case, the respondent finds it difficult to undertake such differentiation, it shall be open to him, to await the conclusion of criminal proceedings, and to resume the disciplinary proceedings, in respect of all the charges.

There shall be no order as to costs.

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(**L.NARASIMHA REDDY, J)**

Dt. 4th January 2006

Note: L.R.Copies be marked.

(B/o)

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